

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-30911-DDO

Chapter 13

Shannon C. Coleman,

Debtor(s).

***NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY***

TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at **9:30 am** on **Wednesday, October 20, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Friday, October 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Monday, October 11, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This motion arises under 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Financial Acceptance seeks relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 13 case was filed on February 18, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2001 Chevrolet Malibu, vehicle identification number 1G1NE52J516214709 (the "Vehicle").

7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. The Chapter 13 Plan requires payments to Wells Fargo Financial Acceptance. The payments are made by the Chapter 13 Trustee. On information and belief, a delinquency under the Plan exists for the month of August 2004 totaling at least \$725.00. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$12,566.40 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$7,925.00. Kenneth V. Coleman is a codebtor on the Contract

10. The failure of the Debtor(s) to make payments pursuant to the Chapter 13 Plan or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.

11. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

12. If testimony is necessary as to any facts relevant to this motion, A. Hansen, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

13. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Financial Acceptance will repossess the Vehicle promptly upon the Court signing the Order.

14. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully moves the Court for an order: (i) modifying the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 27, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13 Case

Shannon C. Coleman,

Bky. No. 04-30911-DDO

Debtor(s).

Affidavit of Andy Hansen

I, Andy Hansen, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):
2001 Chevrolet Malibu VIN# 1G1NE52J5162147095952.
2. \$12,566.40 is the outstanding balance under the contract as of September 23, 2004.
3. \$850.51 is the amount of the existing delinquency under the contract.
4. \$7,925.00 is the fair market value of the Collateral.
5. No Appropriate insurance has been verified.
6. 1450 is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

Dated: 9/23/2004

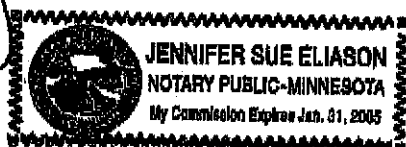


Andy Hansen
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on
September 23, 2004



Notary



FEB-24-2004 TUE 04:51 PM WELLS FARGO ACCEPTANCE

FAX NO. 651+994+1837

P.

Acct # 75069766

881 04/00 (MN) (Auto)

RETAIL INSTALLMENT CONTRACT - MOTOR VEHICLE

JUN 26

Date

BUYER(S) ("I" "Me") (Name, Address, Zip Code)

SELLER ("You") (Name, Address, Zip Code)

KENNETH VERNON COLEMAN JR
SHANNON C COLEMAN
1041 DESOTO STREET
ST PAUL MN 55101

MIDWAY CHEVROLET, INC.
1389 UNIVERSITY AVENUE
ST PAUL MN 55104

DISCLOSURE STATEMENT

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid after I have made all payments as scheduled.	The total cost of my purchase on credit, including my downpayment of
17.95 %	\$ 9602.66	\$ 18025.14	\$ 27667.80	\$ 28000.00

My payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
60	\$ 460.13	06/10/01
		Monthly Beginning

Security: I give you a security interest in the goods or property being purchased.

Filing Fees \$ 2.00

Late Charge: If a payment is late 10 days or more, I will be charged \$5 or 5% of the payment, whichever is greater.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge.

See the other side of this contract document for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

INSURANCE

If I want either credit life or credit life and disability insurance, you can provide me with the coverage through an insurance company that you select. I UNDERSTAND THAT CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT, AND WILL NOT BE PROVIDED UNLESS I SIGN AND AGREE TO PAY THE ADDITIONAL COST. I also understand that only the policy or certificate of insurance that you give me contains the terms of the insurance coverage. Single credit life insurance covers only 1 buyer. Joint credit life insurance covers 2 buyers. Credit disability insurance covers only 1 buyer. The insured buyer is shown on the policy or certificate of insurance.

I may cancel the credit insurance within 10 days from the date of this contract and receive a full refund of the premium. To cancel and get this refund, I must return the certificate or policy to you within the 10 days.

TYPE OF COVERAGE	PREMIUM	TERM
<input type="checkbox"/> Credit disability and joint decreasing credit life insurance	\$ N/A	months
<input type="checkbox"/> Credit disability and single decreasing credit life insurance	\$ 1591.46	60 months
<input type="checkbox"/> Joint decreasing credit life insurance only	\$ N/A	months
<input type="checkbox"/> Single decreasing credit life insurance only	\$ N/A	months

ITEMIZATION OF AMOUNT FINANCED

1. Cash Sale Price (without tax)	\$ 16995.00
2. less Downpayment	
(a) Trade-in allowance less the amount owed on the trade-in.	\$ N/A
(b) Cash Downpayment	\$ 2000.00
Total Downpayment (2 (a) + (b))	\$ 2000.00
3. Amount Paid to Seller for balance of Cash Price (1 minus 2)	\$ 14995.00
4. Charges/Amounts Paid to Others on my behalf	
(a) Government Agencies/Public Officials	
Sales Tax	\$ 1104.66
License Fees on Purchased Vehicle	\$ 281.50
Title & Transfer Fees on Purchased Vehicle	\$ 7.50
Title & Transfer Fees on Trade-in	\$ N/A
Lien Recording Fees (Filing Fees)	\$ N/A
(b) Credit Life Insurance Company	\$ 420.89
Total Credits/Disability Insurance Company	\$ 1170.57

FEB-24-2004 TUE 04:51 PM WELLS FARGO ACCEPTANCE

FAX NO. 651+994+1937

I want the insurance checked above.
 Buyer: [Signature] Date: 05/25/01
 Buyer: [Signature] Date: _____

I may obtain physical damage property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$ N/A. The term of insurance is N/A months.

THIS IS NOT LIABILITY INSURANCE

I may obtain a mechanical breakdown contract from anyone I want. If I buy it from you, I will pay \$ N/A. The term of the mechanical breakdown contract is _____ months.

I understand that you do not provide public liability insurance protecting me against damages from the negligent use of the vehicle.

(d) Physical Damage Property Insurance Co. \$ _____

(e) Other Charges From: MIDWAY CHEVROLET, INC.To: _____ \$ _____
Charge for preparing Documents \$ _____To: WESTERN DIVERSIFIED \$ N/A
For Mechanical Breakdown ContractTo: _____ \$ N/A
For: _____ \$ 18005.14

5. Amount Financed (3 + 4(a) through (e)) \$ _____

* You may be retaining a portion of this amount.

DESCRIPTION OF MOTOR VEHICLE (THE "VEHICLE")

☒ NEW☐ USED

Year

Make

Model

Serial No.

2001

CHEVROLET

MALIBU

1B1NE52J516214709

WELLS FARGO FINANCIAL ACCEPTANCE, INC.

(the "Assignee")

This contract will be assigned to

address 3101 West 69th STREET, EDINA, MINNESOTA 55435

WARRANTIES. Except for any written warranty by the manufacturer, I understand that the vehicle is sold "AS IS" and "WITH ALL FAULTS". THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE VEHICLE IS WITH ME, THE BUYER. I ALSO UNDERSTAND THAT I RECEIVE NO GUARANTEE, EXPRESS WARRANTY, OR IMPLIED WARRANTY (INCLUDING IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) with regard to the vehicle. This means that if the vehicle is defective, damaged or not suitable for my use or any use, you will not be liable and I may not cancel the sale. An implied warranty of merchantability generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitness for a particular purpose is a warranty that may arise when the Seller has reason to know the particular purpose for which I require the vehicle and I rely on the Seller's skill or judgment to furnish a suitable vehicle. You have made no promise to repair or replace the vehicle. This paragraph does not affect any written warranties that may be given by the manufacturer or any mechanical breakdown contract I buy.

NOTICE FOR USED VEHICLES. If the vehicle is a used vehicle or a demonstrator, the following notice applies: THE INFORMATION I SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

I ACKNOWLEDGE THE EXISTENCE OF THE ARBITRATION AGREEMENT SET FORTH ON THE REVERSE SIDE, AND I SPECIFICALLY AGREE TO BE BOUND BY ITS TERMS.

I have read this contract and received a complete copy. I UNDERSTAND AND AGREE THAT THE TERMS ON THE OTHER SIDE ARE PART OF THIS CONTRACT. IMPORTANT: THIS MAY BE A BINDING CONTRACT AND I MAY LOSE ANY DEPOSITS IF I DO NOT PERFORM ACCORDING TO ITS TERMS.

Buyer: [Signature] Date: 05/25/01
 Buyer: [Signature]

Seller: MIDWAY CHEVROLET, INC. Date: 05/25/01
 By: _____ Title: _____

Guarantee: I guarantee that all amounts owed under this contract will be paid when due. I will still be obligated even if any of the Buyers are released or if you waive (give up) or delay enforcement of any of your rights under this contract. You do not have to give me notice of any such release, waiver, or delay.

(signed)

(date)

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

SEE THE OTHER SIDE OF THIS FORM. THIS CONTRACT CONTINUES ON THE OTHER SIDE.

White - Original Copy / Canary - Borrower's Copy / Pink - Assignee's Copy / Gold - Seller's Copy

FEB-24-2004 TUE 04:53 PM WELLS FARGO ACCEPTANCE

FAX NO. 651+984+1937

P. 17

9526

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

75069766

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
415 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBOR NAME AND ADDRESSCOLEMAN KENNETH VERNON JR
COLEMAN SHANNON CHENNEA
1041 BESQTO ST
ST PAUL MN 55101

GUV233

1ST SECURED PARTY

LIENHOLDER

01 Year	CHEV Make	4DM/L Model	F2210N706 Title No.
161NE52J516214709 VIN	06/26/01 Security Date	NO Rebail	

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.WELLS FARGO FIN ACCEPT MN
1715 BEAM AVE
MAPLEWOOD MN 55109-1128

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-30911-DDO

Chapter 13

Shannon C. Coleman,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Wells Fargo Financial Acceptance submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 2001 Chevrolet Malibu with a vehicle identification number 1G1NE52J516214709 (the "Vehicle"). Payments due under the terms of the Chapter 13 Plan totaling \$1,450.00 have not been made by the Debtor(s). The balance due under the Contract is \$12,566.40 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$7,925.00. Kenneth V. Coleman is a codebtor on the Contract. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. § 362(d)(1). Here, the payments have not been made by the Debtor(s) under the Chapter 13 Plan. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtor(s) fails to provide Wells Fargo Financial Acceptance

with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

CONCLUSION

For all the reasons set forth herein, Wells Fargo Financial Acceptance is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Respectfully Submitted,

Dated: September 27, 2004

STEWART, ZLIMEN & JUNGERS

By /s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Shannon C. Coleman

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-30911-DDO

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
David D. Kingsbury
Kingsbury & Associates
14827 Energy Way
Apple Valley, MN 55124

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Debtor(s))
Shannon C. Coleman
1041 Desoto Street
St. Paul, MN 55101

(Co-Obligor)
Kenneth V. Coleman
1041 Desoto Street
St. Paul, MN 55101

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 27, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-30911-DDO

Chapter 13

Shannon C. Coleman,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Wednesday, October 20, 2004 at the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Financial Acceptance to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 2001 Chevrolet Malibu, vehicle identification number 1G1NE52J516214709 in accordance with Minnesota law.

Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge